

REMARKS

In the office action of November 8, 2004, claim 1 is rejected as anticipated by Mayer, U.S. Patent No. 3,038,256, and claims 2 and 10 stand rejected as obvious over Mayer. Claims 1, 2, and 10 also stand rejected as anticipated or obvious in light of McCrea, U.S. Patent. No. 5,036,476. Claims 3-9 and 11-16 were withdrawn by the examiner as drawn to non-elected invention.

As a preliminary matter, applicant has amended claim 1 to require that the spoon and straw combination utensil be formed as a single piece. While this was believed inherent in the use of extrusion forming equipment to create the utensil, the explicit recitation better differentiates the prior art.

Turning then to the Mayer reference, it is first apparent that Mayer discloses a two piece construction where an upper part **14a** of the spoon member **10** interfits in straw member **20**. Secondly, the disclosure of Mayer has been misread as **13**, **13'** do not define a lumen. Rather, **13**, **13'** are concave spoon portions on either side of the unnumbered lumen of the spoon member. The front and back walls **11**, **12** of the bowl portion of Mayer end in a flat edge and are not joined by left and right curved walls defining a lumen. Accordingly, as amended and as explained above, claims 1, 2 and 10 are not anticipated or rendered obvious by Mayer.

Turning then to McCrea, a sipping spoon is disclosed with a three piece construction, namely a spoon stem **22**, a baffle **32** and a mouth **30**. The pieces are joined at location **27**. Thus, McCrea does not suggest or teach the forming of a unitary spoon straw device, or the use of extrusion forming equipment to accomplish such manufacture.

Claims 2 and 10 depend from an allowable independent claim and are therefore also allowable. As claim 1 is an allowable generic claim, claims 3 – 9 should also be allowed. Upon allowance of claims 1-10, applicant will pursue claims 11-16 separately.

The foregoing is submitted as a full and complete response to the office action mailed November 8, 2004.

SUMMARY

The foregoing amendment and remarks are believed to have placed claims 1 – 10 in proper form for allowance and such favorable action is requested.

Respectfully submitted,

MILLER & MARTIN LLP

By: _____

Douglas T. Johnson
Reg. No. 31,841
Attorney for Applicant,
Cleveland Tubing, Inc.
1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402-2289
(423) 756-6600

CERTIFICATE OF MAILING

I hereby certify that the preceding Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

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on this 8 day of February, 2005.

Douglas T. Johnson